DATO' SERI S. SAMY VELLU

v.

VEERASAMY A/L PERUMAL & ANOR.

HIGH COURT, KUALA LUMPUR
PUAN RAHMAH BTE. HUSSAIN JC
[CIVIL SUIT NO. S1-23-44-92]
10 AUGUST 1992

INJUNCTION: Granted ex parte - Application to set aside - Whether injunction should have been granted - Whether application to set aside should be allowed.

TORT: Defamation coupled with plea of conspiracy - Claim for damages - Whether injunction can be granted on a claim for defamation.

The plaintiff claimed that the defendant as the editor of a Tamil Magazine embarked on a systematic campaign to vilify and injure him in his political career by publishing articles and reports which were in disparaging terms of him. The plaintiff sought and obtained an *ex parte* injunction to *inter alia* restrain the defendant from so writing and publishing the said articles and reports.

The defendant applied to set aside the injunction on the grounds that as a journalist it was his duty to critisise, comment, question and expose any shortcoming of any leader who he honestly believed had failed in his duties. It was also contended on behalf of the defendant that the injunction should not have been granted as the cause of the complaint was defamation which the defendant intended to justify at the trial and support it on a defence of fair comment. Counsel for the defendant also alleged that the plaintiff had failed to make full disclosure when he made the application for an injunction and as such the injunction should be set aside.

Held:

[1] A strong *prima facie* case of a dominant purpose to injure the plaintiff in his reputation had been made out and it was clear that there was a conspiracy between the defendant and two members of the opposition. The injunction was rightly granted.

[2] The plaintiff had stated all facts within his knowledge. As such he had made full disclosure.

[Defendants application to set aside injunction dismissed with costs. Early trial ordered]

Cases referred to:

The New Straits Times Press (M) Bhd. v. Airasia Bhd. [1987] 1 MLJ 36 ***(dist)***

Gulf Oil (GB) Ltd. v. Page [1987], 3 AER Rep. 14, CA ***(foll)***

Mohamed Zainuddin Bin Puteh v. Yap Chee Seng [1978] 1 MLJ 40 ***(refd)***

Sari Artists Film Productions Sdn. Bhd. v. Malaysia Film Industries Sdn. Bhd. [1974] 1 MLJ 123 ***(refd)***

American Cyanamid Co. v. Ethicon Ltd. [1975] 2 WLR 316 ***(foll)***

For the plaintiff - R. K. Nathan; M/s. R. K. Nathan & Co.

For the defendant - Logan B. Sabapathy; M/s. Joseph Yeo & Logan B. Sabapathy

[Editorial Note: The defendant has appealed to the Supreme Court *vide* Appeal No. 02-296-92]

JUDGMENT

Rahmah bte. Hussain JC:

This is an application by the first defendant asking for an order that the interim injunction granted on 25 May 1992 be set aside.

In the said interim injunction it was ordered that the applicant/defendant and another, their servants or agents or otherwise be restrained and prohibited from:

(a) further writing of, printing or in any manner howsoever publishing and concerning the plaintiff any matters relating to his alleged involvement in the purported allotment of 10 million Syarikat Telekoms Shares to Maika Holdings Bhd. on or about October 1990.

(b) from writing and publishing news or news articles or in any manner howsoever matters of and concerning the plaintiff as set out in the impugned portions marked as Schedule A and B annexed to the statement of claim.

The suit which gave rise to the application for the *exparte* order was for the following reliefs:

(a) Damages for the tort of conspiracy
(b) Damages for libel
(c) Aggravated and/or exemplary damages in respect of both (a) and (b) above
(d) An injunction to restrain the defendants by themselves, their servants or agents from acting in furtherance of their conspiracy
(e) An injunction to restrain the further publication and perpetration of the said libel and/or similar or like libel

(f) costs
(g) Such further or other relief that this Honourable Court shall deem fit and proper.

For convenience I shall refer to the applicant as the defendant. Now, the facts of the case may be summarised as follows. The defendant was and is still the editor of a Tamil Magazine called "Majallah Toothan". It has been in existence for about twelve (12) years. The defendant became its editor in or about September 1989 and has been writing under the pseudonym "Tamilmani".

The plaintiff was at all material times and still is the Minister in charge of Telecommunication, Post and Energy. By virtue of his post, Jabatan Telekom Malaysia comes directly under the supervision and purview of the plaintiff.

The plaintiff has also been associated with Maika Holdings Bhd. (Maika Holdings) as its founder and promoter. Maika Holdings was incorporated as a vehicle to further the economic interest of the Indian community.

In 1984, the Government of Malaysia implemented its privatisation policy wherein certain public enterprises were corporatised and their shares were floated and sold to the public. As a result of the privatisation policy, Syarikat Telekom Malaysia Bhd. ("Telekom") was incorporated. Then in or about September 1990, Telekom made an announcement of its proposed public issue and its subsequent listing in the Kuala Lumpur Stock Exchange.

By a letter dated 27 September 1990 Maika Holdings was offered 10 million Telekom Shares, and by a letter dated 28 September 1990 the then managing director of Maika Holdings informed the plaintiff that Maika Holdings was only able to take up 1 million shares.

In his affidavit in support of his application to set aside the interim injunction, the defendant contended that in his articles and reports he has always highlighted the interest and welfare of the members of the Indian community which inevitably concern or require comments and criticisms of those who profess to lead and champion the interest of the said community. The defendant added that it is his sincere belief that persons, including the plaintiff, who are leaders in the community and the country and in whom the community has put their trust to improve their lives, and their standard of living, are accountable and subject to scrutiny by the public and in particular, the community they profess to represent. Thus as a journalist and a member of the Indian community it is his duty to criticise, comment, question and expose any shortcoming of any leader, who he honestly believes has failed in his duties.

The plaintiff stated in his affidavit-in-reply that he does not dispute the right of any newspaper to write reasonably and comment on matters of public interest or to criticise leaders and actions they had taken. However, he said the issues before this Court is the *bona fide* and sincerity of the defendant who has obviously embarked upon a systematic campaign to vilify and injure him in his political career. Then the plaintiff went on to attack as well as explain each and every allegation made by the defendant in his affidavit in support. He also highlighted some of the articles in the said magazine which he claimed were in disparaging terms.

In his submission, Mr. L. Sabapathy, learned Counsel for the defendant, stated that when the plaintiff made the application for an injunction he did not do two things:

(a) He did not disclose everything when he approached the Court,
(b) He did not make out a case warranting him to come to Court on an *exparte* basis, without notice to the defendant.

It is also his contention that an injunction should not have been granted particularly where the crux of the complaint is defamation, which alleged defamation, the defendant intends to justify at the trial of the action and to support it on a defence of fair comment. He then cited the case of *The New Straits Times Press (M) Bhd. v. Airasia Bhd.* [1987] 1 MLJ 36. The learned Acting Lord President (Abdul Hamid) - (as he then was) in the course of his judgment in that case said:

> In applying these principles, value is placed by the Court upon the freedom of speech which is related to the freedom by the press when balancing it against the reputation of a single individual who, if wronged, can be adequately compensated in damages. The Court should act cautiously in granting interim injunctions to restrain publication of

an alleged defamatory statement. In fact it should not grant the injunction where the defendant says he is going to justify it at the trial of the action except where the statement is obviously untruthful or where the plaintiff has satisfied the Court that the defence will fail. That was made clear by Denning M.R. in *Harakas v. Baltic Exhcange.*

However in the present case the plaintiff, has also pleaded conspiracy. Paragraph 3 of his statement of claim reads:

> The plaintiff avers and contends that on or about the month of May 1992 (which could include some months previous to this), the first and the second defendants either between themselves and/or with persons who are the financiers and/or partners or promoters of the second defendant and further with person or persons yet unknown who are the opponents of the plaintiff in the MIC (whose names and particulars the plaintiff proposes to obtain by Discoveries and Interrogatories) commenced a conspiracy by way of systematic publication of news and news articles vilifying the person and character of the plaintiff, in particular with regard to the plaintiff's alleged involvement in the allotment of a purported lot of ten (10) million shares in Syarikat Telekom Malaysia to a company called Maika Holdings Berhad (hereinafter referred to as Maika Holdings), with a view of destroying the plaintiff's political career and his position as a Minister in the Government of Malaysia.

It was held in the case of *Gulf Oil (GB) Ltd. v. Page* [1987], 3 AER Rep. 14, CA that the principle that an interlocutory injunction would not be granted to restrain publication of defamatory material where the defendant intended to plead justification did not apply where the material was being published in pursuance of a conspiracy which had the sole or dominant purpose of injuring the plaintiff.

Mr. R. K. Nathan, learned Counsel for the plaintiff contended that the said case is on all fours with the present case and as such the general principle regarding the granting of an injunction in defamation cases does not apply in cases of this nature.

Learned Counsel for the defendant in his reply stated that because of *The New Straits Times* case, all the cases cited, emanating from *The American Cyanamid's* case, cannot apply.

However, *The New Straits Times* case can be distinguished from the *Gulf Oil* case, in that in the former, the only cause of action was one of libel whereas in the latter it is a case of libel coupled with conspiracy. As per Parker LJ in the *Gulf Oil* case:

> It is true that there is no wrong done if what is published is true provided that it is not published in pursuance of a combination and, even if it is, there is still no wrong unless the sole or dominant purpose of the combination and publication is to injure the plaintiff. If however, there is both combination and purpose or dominant purpose to injure, there is a wrong done. When a person sues in conspiracy there is, therefore, a potential wrong even if it is admitted, as it is in the present case, that the publication is true and thus that there is no question of a cause of action in defamation. In such a case the Court can and in my view should, proceed on the same principles as it would in the case of any other tort.

Thus on scrutinising the publications, as annexed to the writ of summons that is Schedule A and B and to the affidavit-in-reply of the plaintiff, Exhibits F1 and F2, I'm of the view that a strong *prima facie* case of a dominant purpose to injure the plaintiff in his reputation, has been made out. Furthermore it is also clear from the exhibits annexed to the plaintiff's affidavit-in-reply, in particular Exhibits K, L, M1 and M2 that there was a conspiracy between the defendant and two members of the opposition party.

The other point raised by learned Counsel for the defendant was that the plaintiff did not make full disclosure when he made the application for an injunction. In the case of *Mohamed Zainuddin Bin Puteh v. Yap Chee Seng* [1978] 1 MLJ 40, Hashim Yeop A. Sani J. (as he then was) said:

> It is an established law that the Court in an application of this nature must be satisfied that the person who asked for the interlocutory injunction did not mean to deceive the Court and that the Court is bound to maintain the principle that those who come asking *ex parte* for injunction must proceed with the highest good faith, and keep back no material facts.

Then in the case of *Sari Artists Film Productions Sdn. Bhd. v. Malaysia Film Industries Sdn. Bhd.* [1974] 1 MLJ 123, it was held that as it appeared that the plaintiff had suppressed material facts in his application for the *exparte* injunction, the injunction must be dissolved

Judging from the affidavit of the plaintiff, I'm satisfied that the plaintiff has stated all facts within his knowledge. As such, to my mind he has made full disclosure.

Applying the principles as laid down in the celebrated House of Lords case of *American Cyanamid Co. v. Ethicon Ltd.* [1975] 2 WLR 316, to the matters as disclosed in the affidavit, it is my view that the interim injunction was rightly granted. As such I see no reason in setting aside the said injunction. Therefore the application is dismissed with costs. However having regard to the circumstances of the case, it would be a proper case for me also to direct an early trial.

KHO YIAN KIM (F) & 2 ORS.

v.

THEN FAH CHIN & ANOR.

HIGH COURT, KUCHING
TUAN RICHARD MALANJUM JC.
[SUIT NO. KG. 151 OF 1990]
3 DECEMBER 1992

CONTRACT: Sale and purchase agreement - Whether there was such an agreement between the first plaintiff and first defendant - Terms - To what extent as claimed by the plaintiffs - Status of second defendant - Whether any issues raised against her - Remedies - Specific performance specifically claimed - Whether damages appropriate - Costs.

The plaintiffs, in particular, the first two plaintiffs, sought a declaration that the 1st plaintiff was entitled to retain possession of the half of the whole land closer to Serian; alternatively, that she needed only pay the first defendant for that half share the sum of RM20,000 together with whatever interest outstanding as at 31 July 1990; that in any event, the first defendant should execute a registrable transfer in favour of the first plaintiff of that half share.

The plaintiffs claimed that the second plaintiff had lent the first defendant a total sum of RM30,000. The first defendant had built a house on the portion closer to Serian and allowed the first two plaintiffs to live there. It was claimed by the second plaintiff that in 1978 the first defendant agreed to sell the Serian portion to the plaintiffs for RM50,000, with the RM30,000 owed to be deemed as deposit and the balance to be paid within six months. As that portion of the land was currently registered in the name of the second defendant, the plaintiffs wanted the agreement with the first defendant to be specifically performed. A caveat had been entered on the land by the first plaintiff.

The first defendant, on his part, denied the existence of any loan, and whilst admitting to the sale agreement, denied that the subject matter of the sale was the Serian portion, and contended that in any case, the agreement had lapsed due to total lack of consideration as the plaintiff had not paid the agreed price.